

CHAPTER 50

EXEMPTIONS FOR PURCHASE OF GOODS OR SERVICES

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50-0005 Purpose

The provisions herein establish exemptions to the City's public Procurement rules relating to Contracts for Goods or Services. These exemptions are in addition to other exemptions provided for under state law (See e.g.: ORS 279B.065 – 279B.085). These exemptions, together with those provided for under state law, allow the City to enter into certain Contracts or classes of Contracts with limited or no competitive Procurement. Absent such exemptions, every Contract for Goods or Services would have to be let by formal competitive Bid or Proposal ("formal competitive Procurement").

50-0010 Legal Authority

Under ORS 279A.065, ORS 279B.085 and related state statutes, the Contract Review Board may exempt certain Contracts and classes of Contracts for the Procurement of Goods and Services from the requirements of formal competitive Procurement upon the Contract Review Board's finding that (i) it is unlikely that the exemption will encourage favoritism in Awarding the Contract or will substantially diminish competition for the Contract and (ii) the Award of the Contract pursuant to the exemption will result in substantial cost savings to the City. In making the cost savings finding, the Contract Review Board may consider the type, cost, and amount of the Contract, number of persons available to submit a Bid or Proposal and such other factors as may be deemed appropriate. In connection with the enactment of the exemptions contained in this chapter, the Contract Review Board considered and approved findings and conclusions, which can be reviewed by contacting the City's Purchasing Agent or the City Recorder and requesting Resolution 3804 and Exhibit 3 to Agenda Bill 05022.

50-0015 Special Procurements: Single Contract; Single Class

A. Generally.

The City may Award a Contract as a Special Procurement pursuant to the requirements of ORS 279B.085.

B. Public Notice.

The City shall give public notice of the Contract Review Board's approval of a Special Procurement in the same manner as public notice of competitive sealed Bids under BPC 47-0300. The public notice shall describe the Goods or Services or class of Goods or Services to be acquired through the Special Procurement. The City shall give such public notice of the approval of a Special Procurement at least seven (7) Days before Award of the Contract.

C. Protest.

An Affected Person may protest the request for approval of a Special Procurement in accordance with BPC 47-0700. [OAR 137-047-0285]

50-0020 Small Procurements

A. Generally.

Any Procurement of goods or services not exceeding \$5,000 may be awarded in any manner deemed practical by the Purchasing Agent or Finance Director. A Procurement may not be artificially divided or fragmented so as to constitute a small Procurement under this section.

B. Amendments.

The City may amend a Contract Awarded as a small Procurement in accordance with BPC 50-0035. [OAR 137-047-0265]

50-0025 Intermediate Procurements

A. Generally.

For Procurements of Goods or Services greater than \$5,000 and less than or equal to \$50,000, the City shall obtain a minimum of three informally solicited competitive Written quotes. The City shall keep a record of the source and amount of the quotes received. If three informally solicited competitive Written quotes are not available, fewer quotes will suffice, provided a record is made of the effort to obtain the quotes.

B. Negotiations.

The City may negotiate with a prospective Contractor who offers to provide Goods or Services in response to an intermediate Procurement to clarify its quote or Offer, or to effect modifications that will make the quote or Offer more Advantageous to the City.

C. Amendments.

The City may amend a Contract Awarded as an intermediate Procurement in accordance with BPC 50-0035. [OAR 137-047-0270]

50-0030 Sole-Source Procurements

A. Generally.

The City may Award a Contract without competition as a sole-source Procurement of Goods or Services if the Goods or Services are available from only one seller or source.

B. Authorization.

In all instances, approval of the purchase of a Goods or Services from the single seller or source shall be contingent upon a documented written decision that in the particular instance under consideration, the Goods or Services, or class of Goods or Services, are available from only one source.

The Contract Review Board must approve a sole-source Procurement if the Finance Director determines that the Contract that is expected to result from the Procurement under consideration will likely be valued greater than \$50,000. The Finance Director may approve a sole-source Procurement if the Finance Director determines that the Contract that is expected to result from the Procurement will likely be valued at less than or equal to \$50,000.

C. Findings

The determination of a sole source must be based on written findings that may include:

1. That the efficient utilization of existing goods requires the acquisition of compatible Goods or Services;
2. That the Goods or Services required for the exchange of software or data with other public or private agencies are available from only one source;
3. That the Goods or Services are for use in a pilot or an experimental project; or
4. Other findings that support the conclusion that the Goods or Services are available from only one source.

D. Public Notice.

If, but for the City's determination that it may enter into a Contract as a sole-source, the City would be required to select a Contractor using source selection methods set forth in either ORS 279B.055 or ORS 279B.060, the City shall give public notice of the Contract Review Board's determination that the Goods or Services or class of Goods or Services are available from only one source in a manner similar to public notice of competitive sealed Bids under ORS 279B.055 (4) and BPC 47-0300. The public notice shall describe the Goods or Services to be acquired by a sole-source Procurement, identify the prospective Contractor and include the date, time and place that protests are due. The City shall give such public notice at least seven (7) Days before Award of the Contract.

E. Negotiate.

To the extent reasonably practical, the City shall negotiate with the sole source to obtain Contract terms Advantageous to the City.

F. Protest

An Affected Person may protest the Contract Review Board's determination that the Goods or Services or class of Goods or Services are available from only one source in accordance with BPC 47-0710.

50-0035 Amendments to Contracts and Price Agreements

A. Contracts; Generally

The City may amend a Contract without additional competition in any of the following circumstances:

1. The amendment is within the scope of the Procurement as described in the Solicitation Documents, if any, or if no Solicitation Documents, as described in the sole source notice or the approval of the Special Procurement or the Contract, in that order. An amendment is not within the scope of the Procurement if the City determines that if it had described the changes to be made by the amendment in the Procurement Documents, it would likely have increased competition or affected award of the Contract; or
2. These Rules otherwise permit the City to Award a Contract without competition for the Goods or Services to be procured under the amendment; or

3. The amendment is necessary to comply with a change in law that affects performance of the Contract; or
4. The amendment results from renegotiation of the terms and conditions, including the Contract Price of a Contract and the amendment is Advantageous to the City, subject to all of the following conditions:
 - a. The Goods or Services to be provided under the amended Contract are the same as the Goods or Services to be provided under the un-amended Contract; and
 - b. The City determines that, with all things considered, the amended Contract is at least as favorable to the City as the un-amended Contract; and
 - c. The amended Contract does not have a total term greater than allowed in these Rules, the Solicitation Document, the Contract or the approval of a Special Procurement after combining the initial and extended terms.

B. Small or Intermediate Contracts.

The City may amend a Contract Awarded as a small or intermediate Procurement pursuant to subsection A of this Rule, provided that the total increase in Contract price does not exceed the amount set forth in subsection E of this Rule.

C. Price Agreements.

The City may amend a Price Agreement as follows:

1. As permitted by the Price Agreement;
2. If the circumstances set forth in ORS 279B.140(2) exist; or
3. As permitted by applicable law.

D. Scrivener's Errors

The City may amend a Contract to correct scrivener's errors in the Contract.

E. Aggregate Increase Limitations.

The authority to amend Contracts under this section is limited by the affect the amendment has on Contract Price.

1. Generally, the maximum increase resulting from all Contract Amendments shall not exceed 25% of the initial Contract Price absent Contract Review Board approval; provided, however, that the amount of a Contract Amendment entered into pursuant to the authority of subsection A (1) – (3) of this section shall not be added to the base for calculating the 25% maximum limit. For example, in the course of construction related to a \$100,000 Contract to add on to a building, asbestos is discovered. The initial Contract is amended by issuance of a \$50,000 Amendment to prevent environmental pollution and remove the asbestos. Specific Contract Review Board approval is not required if all necessary conditions set forth in one or more of the number paragraphs of subsection A are met. Later, an \$18,000 Amendment is issued to deal with new design features. The \$18,000 Amendment is permitted without specific Contract Review Board approval because the Amendment does not exceed 25% of the initial \$100,000 Contract Price. A second Amendment in the amount of \$9,000 would need Contract Review Board approval because the two \$18,000 and \$9,000 Amendments taken together total more than \$25,000.
2. If the Original Contract was let under authority of BPC 47-0270 and valued under \$50,000, the cumulative amendments (Original Contract amount and all Amendments) shall not increase the Contract Price to greater than \$50,000 absent the Contract Review Board approval. Before approving such a request, the City shall provide to the Contract Review Board in Writing the following information:
 - a. An explanation of the need for the Amendment;
 - b. An explanation why the additional Work was not included in the original scope of Work; and
 - c. An estimated cost of the additional Work.
3. If the Original Contract was let under authority of BPC 47-0265 and valued under \$5,000, the cumulative amendments shall not increase the Contract price to greater than \$6,000 absent Finance Director approval. Before approving such a request, the City shall provide to the Finance Director in Writing the following information:

- a. An explanation of the need for the Amendment;
- b. An explanation why the additional Work was not included in the original scope of Work; and
- c. An estimated cost of the additional Work.

F. Procedure.

The Department responsible for Contract Administration shall:

1. Prepare a required Written justification for a Contract amendment;
2. Submit the proposed Contract amendment and supporting documentation to the Purchasing Agent; and
3. Obtain necessary approvals before the Contract amendment is effective.

The Purchasing Agent will review any proposed Contract amendment for completeness, and submit the request to the appropriate decision maker. All Contract amendments must be made in Writing.

50-0040 Emergency Procurements

A. Authorization.

Pursuant to the requirements of these Rules, the City may enter into a Contract for Goods or Services not related to construction services or Public Improvements without formal competitive Procurement if an emergency exists. (See BPC 49-0150 for Emergency Contracts for construction services and Public Improvements.)

B. Declaration of Emergency Required.

The City Council, Mayor or another officer authorized by the City shall declare the existence of the emergency, as required by subsection C of this section, which shall authorize the City to enter into an emergency Contract.

C. Mandatory Actions.

Regardless of the dollar value of the Contract, when the City enters into an emergency Contract, the City shall:

1. Make a Written declaration of emergency, including findings describing the emergency circumstances that require the prompt performance of the Contract, stating the anticipated harm from failure to establish the Contract on an expedited basis;
2. Encourage competition to the extent reasonable under the circumstances; and
3. Record the measures taken under subsection (2) of this section to encourage competition, the amounts of the quotes obtained, and the reason for selecting the Contractor.

D. Time Limitation.

Any Contract Awarded under this exemption and delegation shall be Awarded within 60 days following declaration of the emergency, unless the Contract Review Board grants a reasonable extension of time for reasons related to the emergency.

E. Notification.

For Contracts greater than \$50,000 in value, the City shall notify the Contract Review Board of the existence of such Contract by submitting a copy of the Written documentation required in subsections A and B of this section to the Contract Review Board within 60 days following the declaration of an emergency, unless the Contract Review Board grants a reasonable extension of time for reasons related to the emergency. If the Contract Review Board grants such an extension, the City shall submit such documentation on or before expiration of the extension.

[OAR 137-047-0280]

50-0045 Equipment Repair and Overhaul

A. Authorization.

The City may enter into a Contract for equipment repair or overhaul without formal competitive Procurement if the cost of equipment repair or overhaul is expected not to exceed \$50,000, subject to the following conditions:

1. Service or parts required are unknown and the cost cannot be determined without extensive preliminary dismantling or testing; or
2. Service or parts required are for sophisticated equipment for which specially trained personnel are required and such personnel are available from only one source; and
3. In either instance, the City documents in its Procurement file the reasons why Competitive Bids or Proposals were deemed to be impractical under this section.

When the cost of equipment repair or overhaul is expected to exceed \$50,000, the City shall obtain Contract Review Board authorization before proceeding with the purchase of the needed repair or overhaul.

B. Notification.

If repairs or overhauls are commenced under a belief that the cost will not exceed \$50,000, but in fact the actual cost is greater than \$50,000, the City shall submit a copy of the Written documentation required in subsection A of this section to the Contract Review Board within 60 days following the repair or overhaul, unless the Contract Review Board grants a reasonable extension of time for reasons related to the repair or overhaul.

50-0050 Contracts for Price Regulated Items

The City may, regardless of dollar value and without formal competitive Procurement, Contract for the direct purchase of Goods or Services where the rate or price for Goods or Services being purchased is established by federal, state, or local regulatory authority.

50-0055 Purchases Under Federal Contracts

A. Authorization.

When the price of Goods or Services has been established by a Contract with an agency of the federal government pursuant to a federal Contract Award, the City may purchase Goods or Services in accordance with the federal Contract without further formal competitive Procurement.

B. Limitations.

In exercising this authority under this exemption, the City shall:

1. Obtain and document permission from the appropriate federal agency granting permission to the City to purchase under the federal Contract;
2. Document the cost savings to be gained for the City from the anticipated purchase from the federal Contract;
3. Forego Contracting pursuant to this exemption absent a demonstrable cost savings; and
4. Obtain Contract Review Board approval before proceeding with the purchase under this provision if the cost of purchase is expected to be greater than \$50,000.

50-0060 Advertising Contracts

The City may purchase advertising, regardless of dollar value, without formal competitive Procurement.

50-0065 Copyrighted Materials

The City may, without formal competitive Procurement and regardless of dollar amount, purchase copyrighted materials if there is only one known supplier available for such goods. Examples of copyrighted materials that may be covered by this exemption may include, but are not limited to, textbooks, instructional materials, library materials, workbooks, curriculum kits, reference materials, audio and visual media, and non-mass-marketed software.

50-0070 Investment Contracts

The City may, without formal competitive Procurement, and regardless of dollar amount, Contract for the purpose of the investment of public funds or the borrowing of funds by the City when such investment or borrowing is Contracted pursuant to duly enacted statute, ordinance, charter, or constitution.

50-0075 Product or Service-Provider Prequalification

A. Authorization.

When specific design or performance specifications must be met or such specifications are impractical to create or reproduce for a type of service or product to be purchased, the City may specify a list of approved or qualified service providers or products by reference to a list of prequalified service providers or products of particular manufacturers or vendors in accordance with the following Prequalification procedure:

1. The City shall make reasonable efforts to notify all known competing service providers or manufacturers and vendors of competing products of the City's intent to compile a list of prequalified service providers or products. The notice shall explain the opportunity competing service providers, manufactures and vendors have to submit applications for including their services or products on the list of the City's prequalified products or service providers. At its discretion, the City may provide notice by advertisement in the Daily Journal of Commerce or other trade journal of state-wide distribution; or, instead of advertising, the City may provide Written notice to service providers, manufacturers and vendors appearing on the appropriate list maintained by the City; and
2. The City shall accept service provider, manufacturer and vendor applications to include products or services in the City's list of prequalified services or products up to 15 calendar days prior to the initial advertisement for Bids or Proposals for the type of service or product to be purchased, unless otherwise specified in the advertisement or the City's Written notice.

B. Appeal of Denial.

If the City denies an application for including a service or product on a list of prequalified service providers or products, the City shall promptly provide the applicant with Written notice of the denial and include the reason for the denial. The applicant may submit a Written appeal to the Contract Review Board requesting review and reconsideration of the denial.

50-0080 Requirements Contracts

A. Authorization.

The City may enter into a Requirements Contract whereby the City agrees for a period not to exceed five years to purchase Goods or Services for an anticipated need from one or more Contractors at a predetermined price. The predetermined price may be market price at the time the anticipated need actually arises. The City may then purchase the Goods and Services from a Contractor Awarded the Requirements Contract without further formal competitive Procurement.

B. Limitations.

A Requirements Contracts may be established for the purposes of minimizing paperwork, achieving continuity of product, securing a source of supply, reducing inventory, combining City requirements for volume discounts, standardization among agencies, or reducing lead-time for ordering. The term of a Requirements Contract, including renewals, shall not exceed five years, unless specifically permitted by the Contract Review Board.

C. Procedures.

If the City intends to let a Contract under this section, (so as to be able to make multiple purchases of a good or service over a period of time) the City shall state the duration of the Contract in the solicitation file and Solicitation Document if any. If the anticipated total purchase amount over the life of a Contract let pursuant to this section is valued at greater than \$50,000, notice of such fact shall be stated in the published advertisement for Bids or Proposals. Such documentation and/or publication shall be sufficient notice as to subsequent purchases.

50-0085 Purchase of Used Personal Property

A. Authorization.

The City may purchase used property or equipment without formal competitive Procurement if the Finance Director makes a Written determines that the purchase:

1. Will result in cost savings to the City; and
2. Will not diminish competition or encourage favoritism.

B. Solicitation Methods.

For purchase of used personal property or equipment less than or equal to \$5,000, the City shall, where practical, obtain three informally solicited competitive verbal quotes. The City shall keep a record of the source and amount of the quotes received.

If three quotes are not readily available, fewer quotes will suffice, provided a record is made of the effort to obtain three quotes.

For purchases of used personal property or equipment costing greater than \$5,000, the City shall, where practical, obtain three informally solicited competitive Written quotes. The City shall keep a Written record of the source and amount of the quotes received. If three Written quotes are not available, fewer quotes will suffice, provided a Written record is made of the effort to obtain the quotes.

Prior to purchase of used personal property or equipment valued greater than \$50,000, the Finance Director shall obtain the Contract Review Board's approval of the expenditure

C. Definition.

As used in this section, the term "used personal property or equipment" means property or equipment that has been placed in its intended use by a previous owner or user for a period of time recognized in the relevant trade or industry as qualifying the personal property or equipment as used at the time of the City's purchase. Used personal property or equipment generally does not include property or equipment if the City was the previous user, whether under a lease, as part of a demonstration, trial or pilot project, or similar arrangement.

50-0090 Employee Benefits and Insurance

The City may purchase employee benefits and insurance without formal competitive Procurement. Employee benefits and insurance includes medical insurance, dental insurance, vision insurance, life insurance, accidental death and dismemberment insurance, long-term care insurance, employee long-term disability insurance, unemployment insurance, and deferred compensation plans.

50-0095 Insurance Contracts

Contracts for insurance where either the annual or aggregate premium is greater than \$50,000 must be let by formal competitive Procurement or by one of the following two procedures:

1. The City may appoint a licensed insurance agent as its "Agent of Record." The Agent of Record shall serve as the City's representative in the insurance market.
 - a. The services the Agent of Record shall provide the City include, but are not limited to, insurance Contract review, loss control, loss forecasting, business needs assessments and securing competitive Proposals from insurance carriers for all the City's coverage's for which the Agent of Record is given responsibility.
 - b. Prior to the selection of an Agent of Record, the City shall make a reasonable effort to inform known insurance agents in Oregon. These efforts shall include advertisement in a publication of general circulation. The advertisement shall include a general description of the nature of the insurance that the City will require.
 - c. In selecting its Agent of Record, the City shall select an agent it determines most likely to perform the most cost-effective services; price alone need not be the only criterion considered in selecting the Agent of Record. The agent may be compensated through commissions paid by insurance companies on the City's account.
 - d. An appointment as the City's Agent of Record shall not exceed a period of five years, but the same agent may be selected in subsequent periods.
2. The City may solicit Bids or Proposals from licensed insurance agents for the purpose of acquiring specific insurance Contracts.
 - a. The City shall make reasonable efforts to inform known insurance agents in the competitive market area that the City is considering such selection. These efforts shall include advertisement in a publication of general circulation.
 - b. In selecting an insurance Contract, the City shall select the insurance Contract most likely to provide the City the most cost-effective coverage; premium cost alone need to be the only criterion considered in selecting a specific insurance Contract. Other factors that may be considered in selecting an insurance

Contract include, but are not limited to coverage, financial stability of the insurer, and loss control services to be provided.

50-0100 Cooperative Procurements

The City may participate in, sponsor, conduct, or administer Cooperative Procurements as set forth in BPC 46-0400 through BPC 46-0480.

50-0105 Ancillary Public Improvements

A Contract entered into between the City and a developer for Public Improvements that is additional to the Public Improvements the City requires the developer to install as a condition of a development permit is exempt from formal competitive Procurement if the additional Work is reasonably related to the Public Improvements required as a condition of the development permit and the cost of the additional work does not exceed \$50,000.

50-0110 Other Agency Contracts

A Contract for the purchase of Goods or Services, other than Public Improvements or Personal Services, from an Entity that is selling substantially identical Goods or Services under Contract with another public agency (the “Originating Agency”) is exempt from formal competitive Procurement if:

1. The Originating Agency selected the Contractor through a competitive process that complied with the Public Contracting Code;
2. The City’s Contract contains the same Contract conditions as the Originating Agency’s Contract and the Originating Agency’s Contract permits the City to purchase Goods or Services at the same unit prices or rates offered to the Originating Agency. For purposes of this subsection, the City’s Contract contains the same Contract Conditions as the Originating Agency’s Contract notwithstanding that the City’s Contract contains price adjustments for minor modifications to customize the Goods or Services to the City’s specifications and other minor specification modifications to conform timing and place of performance to City’s requirements. A specification modification will be considered minor if it does not change the brand, model, primary purpose or function of the Goods or Services and does not result in a unit price or rate adjustment of more than five percent of the unit prices or rates set forth in the originating agency’s Contract.

The City shall obtain Contract Review Board approval before proceeding with the purchase under this section if the cost of purchase is expected to be greater than \$50,000.

50-0115 Brand Name or Equal Specification

A. Authorization.

Solicitation Specifications for Contracts for Goods or Services shall not expressly or implicitly require any product of any particular manufacturer or seller except as expressly authorized in subsections B and C of this section.

B. “Or Equal” Suffix.

A brand name or equal specification may be used when the use of a brand name or equal specification is Advantageous to the City, because the brand name describes the standard of quality, performance, functionality and other characteristics of the product needed by the City.

The City is entitled to determine upon any reasonable bases what constitutes a product that is equal or superior to the product specified, and any such determination is final.

Nothing in this subsection may be construed as prohibiting the City from specifying one or more comparable products as examples of the quality, performance, functionality or other characteristics of the product needed by the City.

C. Brand Names.

A brand name specification may be prepared and used only if the City determines for a solicitation or a class of solicitations that only the identified brand name specification will meet the needs of the City based on one or more of the following written determinations:

1. That use of a brand name specification is unlikely to encourage favoritism in the Awarding of Contracts or substantially diminish competition for Contracts;

2. That use of a brand name specification would result in substantial cost savings to the City;
3. That there is only one manufacturer or seller of the product of the quality, performance or functionality required; or
4. That efficient utilization of existing goods requires the acquisition of compatible Goods or Services.

The Contract Review Board must approve a Specification of a brand name, make or product without an “or equal” or equivalent suffix if the Finance Director determines that the Contract that is expected to result from a Solicitation will likely be valued greater than \$50,000.

The Finance Director must approve a Specification of a brand name, make or product without an “or equal” or equivalent suffix if the Finance Director determines that the Contract that is expected to result from a Solicitation will likely be valued less than or equal to \$50,000.

D. Protest and Judicial Review.

The City’s use of a brand name specification may be subject to review only as provided in BPC 50-0115 (C).

ORS 279B.215

50-0120 [Reserved]

50-0125 [Reserved]

50-0130 [Reserved]

50-0135 [Reserved]

50-0140 Legal Services-Related Contracts

Contracts for legal counsel, expert witnesses, court-appointed attorneys, stenographers and other legal service providers are exempt from formal competitive Procurement and may be hired based upon the judgment of the City Attorney. The City Attorney shall obtain City Council approval of any expenditure for legal services paid to a single legal services provider that is expected to exceed \$50,000. In addition, except for legal counsel hired by the City to provide legal services to indigent criminal defendants prosecuted by the City, the City Attorney shall select and retain all outside legal counsel hired by the City subject to the approval of the City Council.

50-0145 Appointment of Professional Consultants

A. Authorization.

The City may screen and select professional consultants, including architects, engineers, planners, land surveyors and related engineering professionals (hereinafter “Consultants”) without formal competitive Procurement as provided by this section.

B. Screening and Selection of Consultants for Retainer.

The City shall screen and select Consultants to be placed on retainer as follows:

1. The City shall furnish public notice of a solicitation under this section in accordance with section BPC 47-0300.
2. The City may hold a pre-proposal conference with prospective Proposers prior to Closing in accordance with section BPC 47-0420.
3. An RFP under this section shall conform to section BPC 47-0260 and, in addition, shall identify any terms and conditions in the Solicitation Document that are subject to negotiation. The Solicitation Documents may permit Proposers to propose alternative terms and conditions in lieu of the terms and conditions the City has identified as authorized for negotiation. In all cases, the City may negotiate the terms and conditions of a Personal Services Contract in order to provide the City with optimal value and risk protection.
4. An evaluation committee shall evaluate Proposals consistent with the process described in the RFP and applicable law. The Proposal evaluation committee shall consist of any number of City employees and, if desired, members of the community, all with experience relevant to the RFP. Evaluators shall be selected on the basis of their ability to provide

an objective, relevant and impartial evaluation of the Proposals. If there is a conflict of interest, the evaluator shall declare this in Writing and shall be excluded from participating in the evaluation.

5. The Proposal evaluation committee may evaluate the qualifications of all Proposers without benefit of an interview, or may interview all Proposers prior to evaluation, or may evaluate all Proposers and select one or more Proposers for interview and subsequent re-evaluation. In all instances, the Proposal Evaluation Committee's evaluation of Proposals shall be with regard to the evaluation criteria set out in the RFP. The interview of a Proposer may be conducted through any appropriate medium.

Prior to Award, the City may require a Proposer to submit Product Samples, Descriptive Literature, technical data, or other material. Also prior to Award, the City may require demonstration, inspection or testing of a product or service.

6. In evaluating Proposals, the City may seek clarification from a Proposer. Such clarification shall not vary, contradict or supplement the Proposal. A Proposer must submit Written and Signed clarifications and such clarifications shall become part of the Proposer's Proposal.

7. If an initial evaluation of Proposals reveals no likely satisfactory Proposer, the Solicitation may be cancelled or reduced in scope at any time the City determines it is in the public interest to do so.

8. The City shall evaluate all Proposals in accordance with the evaluation criteria set forth in the Request for Proposals. Evaluation criteria may include, but are not limited to, the following:

- a. Availability and capability to perform the work;
- b. Experience of key staff on comparable projects, or in performing comparable services;
- c. Design talent and technical competence, including an indication of the planning process expected to be used in the work;
- d. Demonstrated ability to successfully complete similar projects or perform similar services on time and within budget;
- e. References from past clients, public and private;
- f. Past record of performance on Contracts with governmental agencies and private owners with respect to such factors as cost control, quality of work, ability to meet schedules and Contract administration;
- g. Performance history in meeting deadlines, submitting accurate estimates, producing quality work, and meeting financial obligations;
- h. Status and quality of any required licensing or certification;
- i. Familiarity with the City, including knowledge of local infrastructure and/or City design and construction specifications or techniques;
- j. Knowledge and understanding of the required services as shown through the proposed approach to staffing and scheduling needs;
- k. Fees or costs and any cost management techniques proposed for use;
- l. Results from oral interviews, if conducted;
- m. Availability of any specific required resources or equipment;
- n. Geographic proximity to the project or the area where the services will be performed;
- o. Identity of proposed subcontractors and their qualifications;
- p. Ability to communicate effectively; and

- q. Any other identified criteria deemed relevant to the provision of services.
9. If no evaluation criteria are set forth in a Request for Proposal, all the evaluation criteria listed above (except criterion) shall be considered equally in evaluating submitted Proposals. After evaluation of all Proposals, the City will rank the Proposers. Before ranking Proposers, the City may establish a minimum level of qualification. The level of minimum qualification may be adjusted if the City's evaluation of Proposals establishes a natural break in the scores of Proposers indicating a number of Proposers are closely competitive and more likely than not minimally qualified.
10. If the City establishes a minimum level of qualification, then upon concluding the evaluation of Proposals, the City shall provide Written notice to all Proposers identifying those Proposers at or above the minimum level of qualification.
11. A Proposer found to rank below the minimum level of qualification may protest the City's evaluation and determination of the ranking in accordance with BPC 47-0720 Protests and Judicial Review of Multi-Tiered and Multistep Solicitations. This initial protest period forecloses the right of Proposers who are found below the minimum level of qualification to protest final selection for a specific project.
12. After the protest period expires, or after the City has provided a final response to any protest, whichever date is later, the City shall invite each selected consultant to enter into a retainer agreement. The retainer agreement may have up to a three-year term and must be a form of agreement approved by the City Attorney.

C. Maintenance of Roster.

The Purchasing Agent or designee shall maintain and publish a current roster of all Consultants chosen for retainer agreements by the City. The Contract Administrator shall maintain a record of the Consultants hired to work on a specific project.

D. Screening and Selection of Consultant for a Specific Project.

The procedures the City shall follow when contracting for professional consulting services with regard to a specific project will depend upon a combination of factors including the total anticipated fee and the Contract Administrator's evaluation of which Consultant will likely provide the best value to the City in the context of a specific project.

1. For professional service contracts involving an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at under \$250,000, the Contract Administrator shall select from the Consultants on retainer to the City the Consultant who the Contract Administrator considers the most qualified to provide the best value to the City on a specific project.
 - a. The Contract Administrator's selection shall be made upon the evaluation of the following equally-weighted criteria:
 - i. Consultant's cost as shown by fee schedule;
 - ii. Consultant's technical competencies relevant to the specific project;
 - iii. Consultant's availability to perform desired services in a timely manner; and
 - iv. Consultant's familiarity with the specific project, if such familiarity is likely to result in a significant saving of time or money to the City.
 - b. Upon Written justification approved by a Department Head, the Contract Administrator may select from those Consultants on retainer to the City a particular Consultant to work on a specific project valued at under \$250,000. For purposes of this section, "good cause" includes a Consultant's specialized knowledge about a specific project or expertise regarding a needed professional service.
 - c. A Consultant on retainer who is not selected to perform work for the City on a specific project may protest the selection of a Consultant in accordance with BPC 47-0740 Protests and Judicial Review of Contract Award.
2. For professional service contracts involving an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at \$250,000 or more, but under \$350,000, the Contract Administrator shall first select from the Consultants on retainer to the City a minimum of two Consultants who the Contract Administrator considers most qualified to provide the best value to the City on a specific project.

- a. The Contract Administrator's selection of these consultants shall be made upon the Contract Administrator's evaluation of the following equally-weighted criteria:
 - i. Consultant's cost as shown by fee schedule;
 - ii. Consultant's technical competencies relevant to the specific project;
 - iii. Consultant's availability to perform desired services in a timely manner; and
 - iv. Consultant's familiarity with the specific project, if such familiarity is likely to result in a significant saving of time or money to the City.
 - b. The Contract Administrator shall next prepare an RFP for Personal Services to notify each of the selected Consultants of the proposed work for the specific project. The RFP shall conform to the standards set forth in BPC 47-0260 and shall include Consultant's retainer agreement and a supplemental Contract.
 - c. The City need not furnish public notice of the solicitation under this subsection D(2). Except as provided by this subsection D(2), the procedure for screening and selecting Consultants with regard to a specific project shall conform with the provisions of chapter 47.
 - d. Upon Written justification approved by a Department Head, the Contract Administrator may select from those Consultants on retainer to the City a particular Consultant to work on a specific project valued at \$250,000 or more, but under \$350,000. For purposes of this section, "good cause" includes a Consultant's specialized knowledge about a specific project or expertise regarding a needed professional service.
3. For professional service contracts with an anticipated professional fee, including all consultant fees, reimbursable expenses, anticipated amendments and supplements, valued at \$350,000 or more, the City shall procure Personal Services through formal competitive Procurement, unless otherwise permitted by state law or these Rules.

E. Negotiation of Supplemental Contract.

The Contract Administrator shall negotiate the supplemental terms and conditions of the retainer agreement with the selected Consultant. If a mutually satisfactory supplemental Contract cannot be agreed to, the Contract Administrator may select another Consultant to work on the project using any method permitted by these Rules. In those instances where more than one Responsive Proposal has been received by the City for a specific project, the Contract Administrator may select the Consultant submitting the next best Responsive Proposal if a mutually satisfactory supplemental Contract cannot first be agreed to with the Consultant submitting the best Responsive Proposal.

F. Exemption Nonexclusive.

Nothing in this section prevents the City from selecting a Consultant through formal competitive Procurement or as permitted by section 50-0140.

G. Contract Review Board Approval.

Before the City executes a Personal Services Contract valued greater than \$50,000, the Contract Review Board shall approve the Contract.

50-0170 50-0170 Printing Services

Notwithstanding that the City's cumulative Procurement of printing services may exceed \$50,000 per annum:

A. Intermediate Procurements.

The City may procure any individual contract for printing services valued at less than or equal to \$50,000 by obtaining a minimum of three informally solicited competitive Written quotes. The City shall keep a record of the source and amount of the quotes received. If three informally solicited competitive Written quotes are not available, fewer quotes will suffice, provided a record is made of the effort to obtain the quotes.

B. Small Procurements.

The City may procure any individual contract for printing services not exceeding \$5,000 in any manner deemed practical by the Purchasing Agent or Finance Director. The City shall keep a record of the source and amount of the printing services received. A Procurement may not be artificially divided or fragmented so as to constitute a small Procurement under this section.

50-0175 Termination of Price Agreements

The City may terminate a Price Agreement as follows:

1. As permitted by the Price Agreement;
2. If the circumstances set forth in ORS 279B.140(2) exist; or
3. As permitted by applicable law.

50-0180 Water Infrastructure Contracts Involving Sensitive Information

A. General.

Public Improvement Contracts that relate to the City's water system may be Awarded in accordance with the Intermediate Procurement procedures for competitive quotes established under BPC 49-0160 without regard to the estimated value of the Contract if use of a competitive bid process would likely reveal sensitive information regarding a critical element of the City's water infrastructure.

B. Approval of Use of Exemption.

Prior to conducting a solicitation pursuant to this section, the City's Utility Engineer shall prepare written findings describing how use of a competitive bidding solicitation process would likely reveal sensitive information about the City's water system in the context of a specific project. The findings shall be submitted to the Mayor and the Finance Director for approval or disapproval. The City shall be authorized to conduct a solicitation pursuant to this section only if both the Mayor and Finance Director approve the findings prepared and submitted by the Utility Engineer.